

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

GLEN AND HEATHER MOSES,

Appellant,

v.

SKAGIT COUNTY and KENNETH
RENNER,

Respondent.

SHB No. 90-7

ORDER PARTIALLY GRANTING
RECONSIDERATION OF
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On May 13, 1991 the Shoreline Hearings Board issued Findings of Fact, Conclusions of Law and Order affirming the issuance of a shoreline substantial development permit with conditions to Kenneth Renner.

On May 20, 1991 respondent Renner filed a Motion for Reconsideration. On May 22, 1991 appellant Moses filed a Motion for Reconsideration. Parties made reply filings on June 4 and June 5, 1991.

The Board has considered the above filings and has deliberated. It now issues this:

ORDER PARTIALLY GRANTING
RECONSIDERATION
SHB No. 90-7

ORDER

The following uncontested changes are made to the Findings of Fact, Conclusions of Law and Order:

Finding of Fact II, page 4, line 19, the date the Moses purchased the property from the Carmens is changed to "1988";

Conclusion of Law II, page 12, at lines 12-14 is changed to:


The Renner Lake Cavanaugh property is the dominant tenement and Mr. Renner has an easement over the Moses' property which is the servient tenement.

In all other respects the Motions are DENIED.


This Order shall constitute a final Order for purposes of appeal to Superior Court within 30 days, pursuant to WAC 461-08-240.

DONE this 12th day of June 1991.


SHORELINES HEARINGS BOARD


JUDITH A. BENDOR, Chair


HAROLD S. ZIMMERMAN, Member


ANNETTE S. MCGEE, Member


NANCY BURNETT, Member

 1 by VB/
PAUL CYR, Member

0173B

ORDER PARTIALLY GRANTING
RECONSIDERATION
SHB No. 90-7

0156B

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

GLEN AND HEATHER MOSES,

Appellant,

v.

SKAGIT COUNTY and KENNETH
RENNER,

Respondent.

SHB No. 90-7

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Glen and Heather Moses have appealed Skagit County's issuance of a shoreline substantial development permit to Kenneth Renner for a boathouse and marine railway on Lake Cavanaugh. A conference was held and a Pre-Hearing Order issued which governed the proceedings and listed the legal issues.

The Shoreline Hearings Board held a hearing on November 7-8, 1990, in Mt. Vernon. A non-evidentiary site visit was taken. Board Members attending the hearing were: Judith Bendor, Chair and presiding, Harold S. Zimmerman, Annette S. McGee, Nancy Burnett, and Paul Cyr. Appellants Moses were represented by Attorney Paul Taylor. Respondent Renner was represented by Attorney Jeff Barth. The County did not make an appearance. Court reporter Suzanne Navone (Everett) took the proceedings.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB No. 90-7

1 Sworn testimony and counsel's contentions were heard. Exhibits
2 were admitted and examined. The Board having deliberated, now issues
3 these:

4 FINDINGS OF FACT

5 I

6 Glen and Heather Moses own property including a house in Skagit
7 County on the shores of Lake Cavanaugh (at Subdivision #3, Lot #59,
8 within the Northeast 1/4 of Section 28, Township 33 North, Range 6
9 East, W.M.).

10 The property is within an area designated as Rural Residential in
11 the Skagit County Shoreline Master Program (SCSMP). Under the
12 Shoreline Management Act, Chapt. 90.58 RCW, Lake Cavanaugh is not a
13 shoreline of state-wide significance.

14 II

15 Kenneth Renner has a non-exclusive easement over the southern 20
16 feet of the Moses property, on which he wishes to build a boathouse
17 and an access road. He also wants to build a marine railway into the
18 Lake, over 30 feet of accreted shoreline which abuts the easement.
19 The accreted land is state property. Mr. Renner has a 40 foot dock on
20 this easement to which he has moored his boats, and from which he has
21 launched a 12 foot boat.

22 The easement has and will be used for access to an island in Lake
23 Cavanaugh. Mr. Renner owns 5 acres of this 6.6 acre island. Dorothy
24 Renner owns the remaining 1.6 acres and has a house on the island.

1 The Renners bought the island in 1956 and use it for recreation.

2 III

3 Procedural History

4 The procedural history of this dispute is complex. In 1971
5 Kenneth and Dorothy Renner, then married, entered into an agreement
6 with Frank and Doris Stevens, the predecessors in interest to the
7 Moses. For \$3,000 the Renners were given the easement for ingress and
8 egress. The Renners were to pay 15% of the property taxes. In the
9 same agreement, the Renners were allowed to use the Stevens' boathouse
10 until a boathouse and dock were built on the easement. When the dock
11 and boathouse were completed, the Stevens would reimburse the Renners
12 \$1,000.

13 In 1975 as a result of a Decree of Dissolution, Kenneth Renner
14 alone had the easement right. In 1978 the Stevens sold their property
15 to Daniel and Joanna Jensen. The easement was recorded in Skagit
16 County in January 1978 (Auditor's File No. 871577, volume 300, pp.
17 595-96).

18 In December 1979, Mr. Renner filed an action in Skagit County
19 Superior Court regarding the easement. In June 1981, the Court
20 entered Findings of Fact, Conclusions of Law and Judgment (Cause No.
21 41102), holding the easement was valid for "right-of-way ingress and
22 egress" and was binding on the Jensens. It was decreed that
23 Mr. Renner had permission to clear the easement and construct a road
24 to assure access to the public road, to build a dock and boathouse "in
25

1 conformity with other docks and boathouses in the area" and could park
2 on the easement. Mr. Renner was denied permission to use the
3 boathouse then existing on the Jensens' property and was ordered to pay
4 15% of the property tax when due.

5 In December 1981, an attorney for the Jensens had Mr. Renner sign
6 a handwritten agreement. In the agreement, Mr. Renner limited the
7 road width to 10 feet, to be placed at the southerly portion of the
8 easement (except near the public road), agreed to plant a 10 foot wide
9 buffer of trees along the northerly portion of the easement, and
10 agreed that no boat ramp would be built unless the Jensens agreed.

11 More litigation ensued in Skagit County Superior Court. In
12 August 1985, the Court issued Findings/Conclusions and Judgment (Cause
13 No. 85-2-00121-7), granting Renner the right to clear a 10 foot
14 right-of-way from the public road to the lake and the right to build a
15 ramp in conjunction with a boathouse.

16 In 1987, the Jensens sold the property to Mr. and Mrs. Dennis
17 Carmen. In 1988, Renner built a 40 foot dock into the Lake.

18 The Carmens sold their property to Glen and Heather Moses in
19 September 1989. The Moses were aware of the easement when they bought
20 the property. In that same month, the Moses filed an action in Skagit
21 County Superior Court regarding the easement. In June 1990, the Court
22 entered a Summary Judgment Order, dismissing the Moses' Complaint with
23 prejudice on the grounds of res judicata and collateral estoppel.

1 None of the Superior Court decisions adjudicated conformity with
2 the Shoreline Management Act or the Skagit County Shoreline Master
3 Program. Such matters are first heard by the County, and then on
4 appeal to this Board.

5 IV

6 Shoreline History

7 In August 1988, Renner applied to Skagit County for a shoreline
8 substantial development/variance permit for a boathouse and ramp
9 including rails. The proposed boathouse was to be 30 by 17 feet, 15
10 feet in height, to be built within 8 feet of the Ordinary High Water
11 Mark of the Lake. This placed the boathouse within the shoreline
12 setback of the Skagit County Shoreline Master Program, thereby
13 necessitating a shoreline variance permit.

14 A Determination of Non-Significance under the State Environmental
15 Policy Act was issued in September 1989.

16 After the public hearing on the shoreline permit application, the
17 Skagit County Hearing Examiner denied the variance for the boathouse.
18 The Examiner approved the substantial development permit with
19 conditions, including the following:

- 20 1. The boathouse shall be set back a minimum of 50
21 feet landward of the Ordinary High Water Mark.
22 2. The boathouse shall not be closer than three feet
23 (as measured from the main outside building wall) from
24 the southern easement line.
25 3. The boat house shall not be larger than 24 feet
26 long by 16 feet wide by 15 feet high.

1 4. No more than two boats or watercraft of any kind
2 shall be stored in the boathouse at any time.

3 5. A Drainage Plan, prepared in accordance with the
4 Regulations of Skagit County Drainage Ordinance shall
5 be submitted to the Skagit County Department of
6 Planning and Coommunity Development and approved by the
7 County prior to commencing construction.

8 The Examiner concluded that a shoreline variance permit was not needed
9 for the boat ramp/rails. The Examiner affirmed his decision in
10 November 1989.

11 Mr. Renner appealed the denial of the shoreline variance for the
12 boathouse to the County Commissioners. In March 1989, after other
13 decisions, the Commissioners, through Resolution 11962, affirmed the
14 denial of the variance, but offered Renner two alternatives for
15 constructing the boathouse outside the setback:

16 1. Construct a boathouse (no larger than 25 feet long
17 by 14 feet wide by 12 feet high) a minimum of 50 feet
18 landward of the ordinary high water mark (located at an
19 existing rock bulkhead) and set back a minimum of 3
20 feet from the southern property line and a minimum of 3
21 feet from the northern easement line.

22 2. Construct a boathouse (no larger than 30 feet long
23 by 12 feet wide by 14 feet high) a minimum of 150 feet
24 landward of the ordinary high water mark (located at an
25 existing rock bulkhead) and set back a minimum of 8
26 feet from the southern property line with no setback
27 from the northern easement line.

After additional procedures below, the County issued a
substantial development permit, which was filed with the Department of
Ecology. The Moses filed their appeal with the Shorelines Hearings

1 Board in January, 1989, which the Department certified.

2 V

3 The boathouse would abut the northern side of the easement. It
4 would be 30 feet long, 10 feet wide (9 feet wide on the inside), and
5 13 1/2 feet high to the peaked roof (10 1/2 foot high at the building
6 edge). There would be a sky light on the southern side. The roof
7 gutters would be 6 inches wide. A detention facility would be built
8 for the roof runoff. There would not be a drain inside the building.
9 The building exterior would be plywood with brown shell sheeting.

10 The current design does not include electricity. Nor are there
11 any plans for a generator. The easement does not include a utility
12 easement.

13 Trees would be removed for 6 to 8 feet from the boathouse to
14 allow access into the building. All the trees to be removed would be
15 within the easement.

16 The road would be of compacted gravel. For 50 feet, 10 feet
17 beyond the boathouse in both directions, there would be a low lip
18 retaining wall on the northern side of the property, 4 inches wide and
19 6 inches above the road. This would help guide tires keeping the
20 vehicles and trailered boats channeled within the roadway. Along this
21 50 feet the road would be only 9 feet wide.

22 If the road were required to be 10 feet wide at all points,
23 Kenneth Renner could build a narrower boathouse that would be useable.

VI

The accreted land, which is state property, is 35 feet long until it abuts the Moses property. On land the rails would be 30 feet long, entirely on accreted land, starting within 5 feet of the Moses property/easement. The rails would be 4 feet apart. They would cross from the bank to the water at an angle for about 20 to 30 feet. No cuts would be made in the 3 foot high bank. Once the rails were on water, they would rest on concrete ties on the muddy lake bottom.

The boats stored in the boathouse, or other boats, would be trailered or carted down the gravel road to the railway. During some launches people and vehicles would be on the Moses property/easement while the boats are being lowered down the rails on carts. These carts would be specifically designed for the rails. It would cost about \$300 for others to build comparable carts.

If a ramp were built instead of the rails, it would require cuts in the bank and likely disturb a large tree nearby. The ramp would have to extend out into the Lake for some distance, so that boats could be launched during low water.

The Moses are opposed to both the rail system and a ramp.

VII

There is a public boat launch ramp on the Lake. The Renner family has been using this launch for years, to access the Lake, but prefers the convenience of a boathouse. A boathouse is somewhat more secure than a boat hoist or dock.

1 During the summer the Renner family frequently uses the easement,
2 often with friends, sometimes parking on the State land. Kenneth
3 Renner and his family currently have three boats: a 16 foot ski boat
4 with a 125 horsepower motor, a 14 foot aluminum boat with a 24
5 horsepower motor, and a 12 foot fiberglass boat with a 15 horsepower
6 motor. To date, only the fiberglass boat has been launched from the
7 easement, by carrying it out to the dock.

8 The boats would be fueled at a service station, not on-site.

9 VIII

10 The property adjacent to the south is co-owned by the Whites and
11 Ackers. They have 65 feet of lakeshore frontage and plan to build a
12 cabin on it, about 150 feet back from the Lake. The accreted
13 shoreline in front of their property is also state owned. Their lot
14 is currently wooded and undeveloped. The proposed road on the
15 easement would come right up to their property line.

16 IX

17 The boathouse would not interfere with the Moses', Ackers' or
18 Whites' view of the Lake. The primary concerns are: aesthetics,
19 possible incursions onto the non-easement portions of the Moses
20 property for boathouse maintenance, blocking the easement and access
21 to the Lake, and safety and access for people trying to walk or use
22 the lake shoreline.

23 X

24 There are a number of boathouses around the Lake, and a few
25

1 marine railways. Whether they were built pursuant to shoreline
2 permits or prior to the Shoreline Management Act and/or the SCSMP has
3 not been determined.

4 XI

5 During the year the Lake level can vary by 20 to 25 feet. The
6 bottom is mucky near this site.

7 XII

8 In order to provide access to the Lake for trailering boats to
9 the railway, we find the gravel road has to be a minimum of 10 feet
10 wide at the driving surface, with 10 feet of clearance for vehicles
11 and trailered boats along the entirety of the easement, including the
12 portion adjacent to the boathouse where roof gutters extend beyond the
13 building. As currently proposed, the road would be a maximum of 9
14 feet wide for 50 feet alongside the low retaining wall.

15 XIII

16 There is currently inadequate distance between the boathouse and
17 the non-easement portion of the Moses property for maintenance to be
18 done without going onto the non-easement portion.

19 XIV

20 Any Conclusion of Law deemed to be a Finding of Fact is hereby
21
22
23
24
25
26

1 adopted as such.

2 From these Findings of Fact, the Board makes these:

3 CONCLUSIONS OF LAW

4 I

5 The Shoreline Hearings Board has jurisdiction over these issues
6 and these parties. Chapt. 90.58 RCW. Appellants have the burden of
7 proof.

8 II

9 The SCSMP definition of a boathouse recognizes that such
10 structures are:

11 . . . usually common to a single family residence
12 and will, as such, be treated as an accessory use
or garage. p. 3-3; emphasis added.

13 In this instance the boathouse is "common" to a marine railway, not a
14 single family residence.

15 The County required the boathouse be analyzed as part of the
16 shoreline permit, even though it was ultimately located at 205
17 landward of the ordinary high water mark (OHWM), beyond the 200 feet
18 of the shoreline. We conclude the County's approach was correct, as
19 the boathouse is integrally linked to the marine railway which is
20 within the shoreline. To do otherwise, and not require a permit for
21 the boathouse, would be to engage in piecemeal development. See
22 Lovelis v. Yantis, 82 Wn.2d 754 (1973); Eastlake Community Council v.
23 Roanoke Associates, Inc., 82 Wn.2d 475 (1973).

1 III

2 Appellants contend the boathouse violates the SCSMP setback
3 regulation for rural residential. The regulation provides:

4 *Boathouses for private use shall be setback 50 feet*
5 *landward of the OHWM and eight feet from side*
property lines. p. 7-62.

6 The boathouse is more than 8 feet from the Ackers' and Whites' property
7 line. We conclude this regulation is not violated.

8 Appellants contend that the property line at issue is the easement
9 line on the Moses property and the boathouse directly abuts this line
10 rather than being setback 8 feet. We do not agree. The easement line
11 is not a "property line" as that term is used in the SCSMP. The Moses
12 own all the property, including the easement. Under the definition of
13 easement, the Moses property is the "dominant tenement" and the
14 easement is the "servient tenement". Black's Law Dictionary, 4th Ed.
15 Revised. The two tenements are not separate properties.

16 IV

17 The term "launch ramp" is defined in the SCSMP as:

18 *an enclosed slab, set of pads, planks, or graded*
19 *slope used for launching boats with trailers or*
20 *occasionally by hand; extensive parking and turn*
around areas are usually accessory to launch
ramps. p. 3-13.

21 The term "marine railway" or "railway" is not defined in the Program.
22 For determining consistency with the Program, we conclude the policies
23 and regulations for "launch ramp" are to be applied.

24 Appellants contend that the SCSMP goals and policies for Piers and
25

1 Docks at Section 7.10 should be applied. We do not agree. A marine
2 railway is more like a boat launch.

3 V

4 The railway is on public property. It is accessed over the Moses'
5 private property. People walk along the public shores of the Lake
6 which will be traversed by the marine railway. We conclude appellants
7 have the right to raise the issue of public access.

8 We conclude that public access is not significantly adversely
9 affected if the following conditions are added:

- 10 1. Except when a launch or landing is underway,
11 neither the permittee nor his guests may park or
otherwise block access to the railway or the ability
of others to use the railway.
- 12 2. Permittee shall at all times maintain the railway
13 in safe operating condition.
- 14 3. The surface of the gravel road shall be a minimum
of 10 feet wide.

15 VI

16 Appellants contend that the marine railway violates the setback
17 requirements of the SCSMP. The Shoreline Master Program permits boat
18 launches in rural residential environments subject to the General and
19 Tabular Regulations. Section 7.07.2.A.(2)b. The Tabular regulations
20 require that boat launches be setback 30 feet from side yards. Table
21 M, p. 7-44.

22 Respondents argue that since the launch is entirely on state land,
23 there are no boundary line or side yard line, and therefore the SCSMP
24 setback requirement does not apply.

1 We agree with respondents. There is no adjacent sideyard property
2 line and the setback requirement does not apply.

3 VII

4 We conclude that appellants' general contentions that the proposal
5 violates the State Environmental Policy Act, Chapt. 43.21C RCW, are not
6 supported by the facts.

7 VIII

8 Any Finding of Fact which is deemed a Conclusion of Law is hereby
9 adopted as such.

10 From these Conclusions of Law, the Board enters the following:
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER


The County's issuance of a shoreline substantial development permit is AFFIRMED, as modified by the conditions in Conclusion of Law V, above.

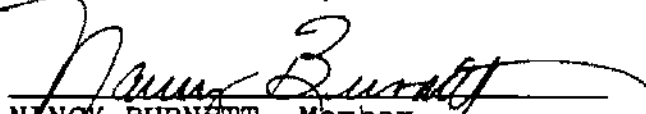
DONE this 13th day of May 1991.

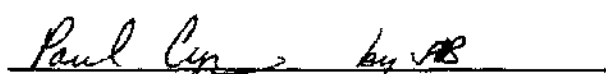
SHORELINES HEARINGS BOARD


JUDITH A. BENDOR, Chair


HAROLD S. ZIMMERMAN, Member


ANNETTE S. MCGEE, Member


NANCY BURNETT, Member


PAUL CYR, Member